
SENATE BILL No. 264

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-50-2-8.

Synopsis: Habitual offender. Provides that the state may seek to have a person sentenced as a habitual offender by alleging and proving that the person has accumulated at least two prior unrelated felony convictions. Specifies that the state may use the same prior unrelated felony convictions in a later habitual offender proceeding that were used in an earlier habitual offender proceeding. Permits the state to introduce the person's entire criminal history in the habitual offender sentencing hearing.

Effective: July 1, 2007.

Walker

January 8, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 264

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-50-2-8, AS AMENDED BY P.L.71-2005,
2 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 8. (a) Except as otherwise provided in this section,
4 the state may seek to have a person sentenced as a habitual offender for
5 any felony by alleging, on a page separate from the rest of the charging
6 instrument, that the person has accumulated **at least** two (2) prior
7 unrelated felony convictions.
8 (b) The state may not seek to have a person sentenced as a habitual
9 offender for a felony offense under this section if:
10 (1) the offense is a misdemeanor that is enhanced to a felony in
11 the same proceeding as the habitual offender proceeding solely
12 because the person had a prior unrelated conviction;
13 (2) the offense is an offense under IC 9-30-10-16 or
14 IC 9-30-10-17; or
15 (3) all of the following apply:
16 (A) The offense is an offense under IC 16-42-19 or
17 IC 35-48-4.



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- 1 (B) The offense is not listed in section 2(b)(4) of this chapter.
 2 (C) The total number of unrelated convictions that the person
 3 has for:
 4 (i) dealing in or selling a legend drug under IC 16-42-19-27;
 5 (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
 6 (iii) dealing in a schedule I, II, III controlled substance
 7 (IC 35-48-4-2);
 8 (iv) dealing in a schedule IV controlled substance
 9 (IC 35-48-4-3); and
 10 (v) dealing in a schedule V controlled substance
 11 (IC 35-48-4-4);
 12 does not exceed one (1).
 13 (c) A person has accumulated two (2) prior unrelated felony
 14 convictions for purposes of this section only if:
 15 (1) the second prior unrelated felony conviction was committed
 16 after sentencing for the first prior unrelated felony conviction; and
 17 (2) the offense for which the state seeks to have the person
 18 sentenced as a habitual offender was committed after sentencing
 19 for the second prior unrelated felony conviction.
 20 (d) A conviction does not count for purposes of this section as a
 21 prior unrelated felony conviction if:
 22 (1) the conviction has been set aside;
 23 (2) the conviction is one for which the person has been pardoned;
 24 or
 25 (3) all of the following apply:
 26 (A) The offense is an offense under IC 16-42-19 or
 27 IC 35-48-4.
 28 (B) The offense is not listed in section 2(b)(4) of this chapter.
 29 (C) The total number of unrelated convictions that the person
 30 has for:
 31 (i) dealing in or selling a legend drug under IC 16-42-19-27;
 32 (ii) dealing in cocaine or a narcotic drug (IC 35-48-4-1);
 33 (iii) dealing in a schedule I, II, III controlled substance
 34 (IC 35-48-4-2);
 35 (iv) dealing in a schedule IV controlled substance
 36 (IC 35-48-4-3); and
 37 (v) dealing in a schedule V controlled substance
 38 (IC 35-48-4-4);
 39 does not exceed one (1).
 40 (e) The requirements in subsection (b) do not apply to a prior
 41 unrelated felony conviction that is used to support a sentence as a
 42 habitual offender. A prior unrelated felony conviction may be used

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1 under this section to support a sentence as a habitual offender even if
 2 the sentence for the prior unrelated offense was enhanced for any
 3 reason, including an enhancement because the person had been
 4 convicted of another offense. However, a prior unrelated felony
 5 conviction under IC 9-30-10-16, IC 9-30-10-17, IC 9-12-3-1 (repealed),
 6 or IC 9-12-3-2 (repealed) may not be used to support a sentence as a
 7 habitual offender.

8 (f) If the person was convicted of the felony in a jury trial, the jury
 9 shall reconvene for the sentencing hearing. If the trial was to the court
 10 or the judgment was entered on a guilty plea, the court alone shall
 11 conduct the sentencing hearing under IC 35-38-1-3.

12 **(g) The state may introduce the person's entire criminal history**
 13 **as evidence in a habitual offender sentencing hearing under this**
 14 **section.**

15 ~~(g)~~ **(h)** A person is a habitual offender if the jury (if the hearing is
 16 by jury) or the court (if the hearing is to the court alone) finds that the
 17 state has proved beyond a reasonable doubt that the person had
 18 accumulated **at least** two (2) prior unrelated felony convictions, **even**
 19 **if one (1) or more of the prior unrelated felony convictions were**
 20 **previously offered by the state to have the person sentenced as a**
 21 **habitual offender in an earlier habitual offender proceeding.**

22 ~~(h)~~ **(i)** The court shall sentence a person found to be a habitual
 23 offender to an additional fixed term that is not less than the advisory
 24 sentence for the underlying offense nor more than three (3) times the
 25 advisory sentence for the underlying offense. However, the additional
 26 sentence may not exceed thirty (30) years.

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